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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

THE PEOPLE,

Plaintiff and Respondent,

v.

CRYSTAL MARIE DENNIS,

Defendant and Appellant.

C066121

(Super. Ct. No.
CRF103222)

Appointed counsel for defendant, Crystal Marie Dennis, asked this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).) We find defendant is entitled to an additional day of conduct credit pursuant to Penal Code section 4019. We will modify the judgment accordingly and affirm the judgment as modified.

I

In June 2010, defendant fought with her boyfriend, Ray Fritz, and a neighbor, Keith Ashberry. During the altercation, defendant hit Fritz and Ashberry with a metal crutch. Peace officers responded to the scene of the argument and found defendant inside the apartment she shares with Fritz.

The officers ordered defendant to open the door to the apartment. When defendant failed to respond, the officers forced the door open and found defendant lying on a bed with her two-year-old child lying next to her. As the officers attempted to put defendant in the patrol car, she broke free and ran back toward the apartment. In her haste, defendant ran into another officer who blocked her; defendant bounced off of him and hit the window of another apartment, shattering it.

Defendant was arrested and charged with assault by means likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(1)); infliction of corporal injury on a cohabitant (Pen. Code, § 273.5, subd. (a)); resisting an executive officer by means of threats, force, or violence (Pen. Code, § 69); and resisting or obstructing a peace officer (Pen. Code, § 148, subd. (a)(1)). It was further alleged that defendant served a prior prison term within the meaning of Penal Code section 667.5, subdivision (b).

Defendant pleaded no contest to resisting an executive officer by means of threats, force, or violence and agreed to a term of two years in state prison. In exchange for her plea,

the remaining charges and enhancements were dismissed with a Harvey waiver (*People v. Harvey* (1979) 25 Cal.3d 754).

Defendant was later sentenced according to her plea. The court ordered defendant to pay various fines and fees and awarded her 13 days of custody credit (seven actual days and six conduct days). Defendant filed her notice of appeal on September 20, 2010; she appeals without a certificate of probable cause.

II

Appointed counsel filed an opening brief that sets forth the facts of the case and asked this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days have elapsed and we have received no communication from defendant.

Having reviewed the record, we find defendant is entitled to an additional day of conduct credit pursuant to the recent amendments to Penal Code section 4019.

On September 28, 2010, as an urgency measure effective on that date, the Legislature enacted Senate Bill No. 76 (Sen. Bill No. 76), which amended Penal Code section 2933, regarding presentence conduct credits for defendants sentenced to state prison. The amendment gives qualifying prisoners one day of presentence conduct credit for each day of actual presentence confinement served (Sen. Bill No. 76, § 1; Pen. Code, § 2933, subd. (e)(1), (2), (3)), thereby eliminating the loss of one day

of presentence conduct credit under the rate specified by Senate Bill No. 18 when the person served an odd number of days in presentence custody. It also eliminates the directive in Penal Code section 4019 that no presentence conduct days are to be credited for commitments of fewer than four days. (Sen. Bill No. 76, § 1; Pen. Code, § 4019, subd. (g).)

The amendment effective September 28, 2010, which now supersedes the amendments effective January 25, 2010, does not state it is to be applied prospectively only. Consequently, for the reasons we concluded the amendments increasing the rate of earning presentence conduct credit, effective January 25, 2010, applied retroactively to defendants sentenced prior to that date, we similarly conclude the rate now provided in Penal Code section 2933 applies retroactively to all appeals pending as of September 28, 2010.

Having served seven days' presentence custody, defendant is entitled to seven days' conduct credits. We will modify the judgment accordingly. We find no further error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is modified to reflect an award of seven days' conduct credit for a total of 14 days' presentence credit pursuant to Penal Code section 4019. The trial court shall forward a certified copy of the modified abstract of judgment to the Department of Corrections and Rehabilitation.

As modified, the judgment is affirmed.

_____ HULL _____, Acting P. J.

We concur:

_____ BUTZ _____, J.

_____ HOCH _____, J.